

**REMARKS**

Claims 1-36 are pending in the present application. In the above amendments, claims 1, 11, 15, 22, 23 and 24 have been amended, and claims 25-36 have been added.

*Applicants respectfully respond to this Office Action.*

*Objections to the Specification*

The specification was objected to for use of Attorney Docket numbers on pages 1-2. The amendment to the specification replaces the Attorney Docket numbers with the corresponding application numbers and filing dates. Accordingly, the objection to the specification should be withdrawn.

*Claim Rejections – 35 USC § 101*

Claims 22 and 23 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The Examiner asserts that “the ‘means’ recited in claims 22-23, in accordance with the specification, can be software, per se, which does not fall within one of the statutory classes of invention (i.e., the software is not tangibly embodied on a storage medium).” See, Office Action, page 5.

The rejections of claims 22 and 23 as allegedly directed to non-statutory subject matter are respectfully traversed. An element of a claim expressed as a means for performing a specified function “shall be construed to cover the corresponding structure . . . described in the specification . . .” 35 U.S.C. § 112, ¶6. “The scope of a ‘means’ limitation is defined as the corresponding structure or material set forth in the written description and equivalents thereof.” See, MPEP 2106 V.A. Further, the USPTO may not disregard structure disclosed in the specification that corresponds to means (or step) plus function language. In re Donaldson Co., 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994) (emphasis added). By asserting that the claims can cover software alone, without any hardware, the Examiner is not following the clear directive in the statute for construing means for claims, namely, that means for claims “shall be construed to cover the corresponding structure . . . described in the specification.” Examples of corresponding

structure are clearly shown in Figures 3, 4, 5, 6 and 8A-8D, and described throughout the specification.

Further, Applicants assert that claims 21 and 22 each are directed to “a machine.” The preamble of claim 22 recites “a wireless communication system” and the preamble of claim 23 recites “an infrastructure element.” Applicants assert that construing a claim to cover “software, per se” is not a rational construction of a claim that is explicitly directed to “a wireless communication system” and to “an infrastructure element.” Further, “computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, **the claim remains statutory irrespective of the fact that a computer program is included in the claim.**” See, MPEP 2106.01, I (emphasis added).

Further, as explained in the Manual of Patent Examining Procedure (MPEP), “the burden is on the USPTO to set forth a *prima facie* case of unpatentability. Therefore if USPTO personnel determine that it is more likely than not that the claimed subject matter falls outside all of the statutory categories, they must provide an explanation.” MPEP 2106, IV. B. Applicants assert that the Examiner has not provided an explanation on why the **wireless communication system** of claim 22 is not a **machine**. Similarly, Applicants assert that the Examiner has not provided an explanation on why the **infrastructure element** of claim 23 is not a **machine**.

Accordingly, the rejections of claims 22 and 23 as directed to non-statutory subject matter should be withdrawn.

#### ***Claim Rejections – 35 USC § 102***

Claims 1-5, 10-11, 13-16 and 18-24 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,690,795 to Richards.

The rejection of claim 1 as allegedly anticipated by the Richards patent is respectfully traversed. Amended claim 1 is directed to a method for secure transmission, that (among other things) comprises: “updating the second key after a second time period has elapsed, wherein the second key is updated in two parts, a first part known to the participant in the transmission and a second part sent on the broadcast channel, and wherein the first part and the second part are concatenated to generate the second key.” The amendment to claim 1 is supported in the

specification at page 18, lines 31-32, and at page 22, lines 2-12. The Richards patent fails to disclose updating the second key after a second time period has elapsed, wherein the second key is updated in two parts, a first part known to the participant in the transmission and a second part sent on the broadcast channel, and wherein the first part and the second part are concatenated to generate the second key. Thus, the Richards patent fails to disclose all of the features recited in amended claim 1. Accordingly, the rejection of claim 1 as allegedly anticipated by the Richards patent should be withdrawn.

It is respectfully submitted that dependent claims 2-5 are at least allowable for the reasons given above in relation to independent claim 1.

Claims 11, 15, 22, 23 and 24 are method, infrastructure element, wireless communication system, and digital storage device claims defined by language similar to that of method claim 1. For reasons similar to those discussed above with respect to claim 1, the rejections of claims 11, 15, 22, 23 and 24, as allegedly anticipated by the Richards patent, should be withdrawn.

It is respectfully submitted that dependent claims 13-14, 16 and 18-21 are at least allowable for the reasons given above in relation to the respective independent claims 11 and 15.

*Claim Rejections – 35 U.S.C. § 103(a)*

Claim 6 has been rejected under 35 U.S.C. 103(a) as being unpatentable over the Richards patent in view of a publication by LinuxGurux. Claims 7-9 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Richards patent in view of a publication by Schneier. Claims 12 and 17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Richards patent in view of U.S. Patent No. 6,073,122 to Wool.

The rejection of claim 6 as being unpatentable over the Richards patent in view of the LinuxGurux publication is respectfully traversed. Applicants assert that the LinuxGurux publication fails to remedy the disclosure deficiencies of the Richards patent as described above with respect to claim 1. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection of claim 6.

The rejections of claims 7-9 as being unpatentable over the Richards patent in view of the Schneier publication are respectfully traversed. Applicants assert that the Schneier publication fails to remedy the disclosure deficiencies of the Richards patent as described above with respect

to claim 1. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejections of claims 7-9.

The rejections of claims 12 and 17 as being unpatentable over the Richards patent in view of the Wool patent are respectfully traversed. Applicants assert that the Wool patent fails to remedy the disclosure deficiencies of the Richards patent as described above with respect to claims 1, 11 and 15. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejections of claims 12 and 17.

*New Claims*

New claims 25, 27, 29, 31, 33 and 35 are supported in the specification at page 24, line 30 – page 25, line 7, and by Figure 8C. New claims 26, 28, 30, 32, 34 and 36 are supported in the specification at page 18, lines 31-32, and at page 22, lines 2-12. Applicants respectfully assert that new claims 25-36 recite patentable features over the cited prior art and should be allowed.

**PATENT**

**REQUEST FOR ALLOWANCE**

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

**Dated: December 11, 2008**

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